

D.T.E. 02-29-10

Complaint filed by Priscilla Jay, pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy claiming World Communication Satellite Systems, Inc., switched her regional and long-distance telephone service without authorization.

APPEARANCES: Priscilla Jay
100 Main Street
Northboro, MA 01532
Complainant

Oscar de Alba
Customer Service Manager
World Communication Satellite Systems, Inc.
3730 Kirby Drive, Suite 1200
Houston, TX 77098
Respondent

I. INTRODUCTION

On June 18, 2002, Priscilla Jay (“Complainant”), pursuant to G.L. c. 93, § 108 et seq., filed a complaint with the Department of Telecommunications and Energy (“Department”) alleging that her regional and long-distance telecommunications service was switched without authorization to World Communication Satellite Systems, Inc. (“WCSS” or “Company”).¹ On August 20, 2002, pursuant to notice duly issued, the Department conducted an evidentiary hearing. Ms. Jay appeared pro se and testified on her own behalf. WCSS did not appear to contest the Complainant’s allegations.

II. POSITIONS OF THE PARTIES

A. Complainant

The Complainant contends that WCSS switched her regional and long-distance telephone service on or about May 18, 2002 while she and her husband were on vacation in Colorado (Exhs. Consumer-1; Consumer-2; DTE-1; DTE-2; DTE-3; DTE-4; Tr. at 5, 7, 11-12, 18). The Complainant submitted her invoices from WCSS for long-distance charges incurred from May 22, 2002 through May 26, 2002 (Exh. Consumer-1). The Complainant testified that she was never contacted by WCSS for the provision of long-distance or regional telephone service, and that she was unable to have requested such a switch from her home on May 18, 2002, as she and her husband were on vacation in Colorado from May 11, 2002 through May 21, 2002 (Exh. Consumer-2; Tr. at 5, 7, 11-12, 15, 18).

¹ Pursuant to 220 C.M.R. § 13.02, any unauthorized change to a customer’s primary interexchange carrier or local exchange carrier is known as “slamming.”

The Complainant discovered the alleged slam upon her return from vacation, when she had trouble making a long-distance telephone call and contacted her original long-distance service provider, AT&T (Tr. at 7, 12). At this time, on or about May 26, 2002, AT&T informed her that she was no longer their customer, but instead was a customer of Qwest Communications, Inc. ("Qwest"), for regional and long-distance telephone service (id. at 7, 12-13). Following that call, the Complainant contacted the Department's Consumer Division ("Division"), who investigated the switch and determined that the Complainant had been switched by WCSS, a reseller of Qwest services (id. at 13). Following her conversation with the Division, the Complainant contacted Verizon who switched her regional and long-distance telephone service back to her original provider, AT&T (id. at 15). The Complainant testified that the amount of the slam totals \$18.38 (Exh. Consumer-1; Tr. at 14).²

Additionally, on July 15, 2002, WCSS provided the Department with notification of a refund in the amount of \$7.19, representing a re-rate of all calls made by the Complainant from May 22, 2002 through May 26, 2002 plus the switching fee (Exh. DTE-3). Accompanying that letter, WCSS provided an audiotape stating that the Complainant had verbally authorized the switch through a telemarketing call on May 18, 2002 (Exh. DTE-5). After listening to the third party verification ("TPV") tape at the hearing, the Complainant testified that the voice on the tape was not her own, and that she had never been contacted by WCSS for the provision of regional or long-distance telephone service (Exh. DTE-5;

² The \$18.38 amount consists of the following: \$2.38 in toll call usage; \$5.00 for the WCSS long-distance monthly service fee; \$5.00 for the Qwest selection charge; and \$6.00 for the WCSS long-distance setup fee (Exh. Consumer-1).

Tr. at 20-21).

B. WCSS

WCSS failed to appear at the hearing conducted by the Department to respond to the Complainant's allegations. On July 15, 2002, the Company forwarded to the Department its response to Ms. Jay's consumer complaint, stating that the Complainant had verbally authorized the switch through a telemarketing call on May 18, 2002 (Exh. DTE-3). Included in the letter, WCSS provided the Department with notification of a refund in the amount of \$7.19, representing a re-rate of all calls made by the Complainant from May 22, 2002 through May 26, 2002 plus the switching fee (id.). WCSS also provided an audiotape with the letter which, it stated, contained the Complainant's oral authorization given during a telemarketing call on May 18, 2002 (Exhs. DTE-3; DTE-5).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange carrier ("IXC") shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed letter of authorization ("LOA") or oral confirmation of authorization through TPV obtained by a company registered with the Department to provide TPV services in the Commonwealth.

Pursuant to G.L. c. 93, § 110 (i), the Department shall hold a hearing to determine, based on our review of the LOA or TPV and any other information relevant to the change in telephone service, whether the customer did authorize the carrier change.

In addition to the Massachusetts' slamming law set forth above, the Federal Communications Commission ("FCC") implemented new slamming liability rules. Corrected Version First Order on Reconsideration, CC Docket No. 94-129 (May 3, 2000) ("Corrected Order"). In accordance with those rules the company that switches a customer's telephone service without authorization must pay the customer's authorized company a penalty equal to 150 percent of the charges received from the customer. The authorized company is then required to return one third of that amount, or 50 percent of what the customer paid to the unauthorized carrier, to the customer. See 47 C.F.R. § 64.1140. In the Corrected Order the FCC concluded that states should have primary responsibility for administering their slamming liability rules (See ¶¶ 22-28, 33-37, 52, 84). On November 3, 2000, pursuant to 47 C.F.R. § 64.1110, the Department provided to the FCC its State Notification of Election to Administer FCC Rules (See Letter to Magalie Roman Salas, November 3, 2000).

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i) the Department conducted a hearing on August 20, 2002, to determine whether the change in the Complainant's regional and long-distance carrier was authorized. WCSS failed to appear to refute the Complainant's allegations (Tr. at 3). Thus, the Department finds that WCSS switched the Complainant's regional and long-distance telecommunications services without authorization.³

³ An IXC determined by the Department to have intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. 93, § 112(b). Also, pursuant to G.L. c. 93, § 112(b) an IXC or LEC determined by the Department to have switched any customer's IXC or

(continued...)

Having found that WCSS initiated this unauthorized switch in the Complainant's regional and long-distance service, and in accordance with the FCC's Corrected Order, the Department directs WCSS to pay AT&T, the Complainant's authorized regional and long-distance service provider, 150 percent of the charges it received from the Complainant within 10 days of this Order. AT&T shall remit one third of that amount, or 50 percent of what the Complainant paid to WCSS, to the Complainant.

V. ORDER

Accordingly, after notice, hearing, consideration, and determination that World Communication Satellite Systems, Inc., switched Priscilla Jay's regional and long-distance telephone service provider without authorization in violation of the provisions of Massachusetts G.L. c. 93, § 109 (a), it is hereby

ORDERED: That World Communication Satellite Systems, Inc., shall comply with the directives contained in this order; and it is

³(...continued)

LEC without proper authorization more than once in a 12 month period, shall be subject to a civil penalty not to exceed \$1,000 for the first offense and not less than \$2,000 for any subsequent offense. Because this is a first offense, the Department determines that no penalty under G.L. c. 93, § 112(b) shall be imposed.

FURTHER ORDERED: That World Communication Satellite Systems, Inc., shall submit to the Department within ten (10) business days of the issuance of this order, an accounting of refunds and credits made to AT&T.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).